

REMARKS

Claims 1-3, 8-10, 18-20 and 38-49 are pending in the application.

Restriction

Claims 1-3, 8-10, 18-20 and 38-49 are subject to restriction by the Examiner into Groups 1-11, drawn to eleven isolated polypeptides and pharmaceutical compositions comprising SEQ ID NOS:14 and 19-28, and SEQ ID NOS:15 and 29-38 (which respectively comprise SEQ ID NOS:14, and 19-28).

Election

In response to the Restriction Requirement, Applicants hereby elect **Group 1, with traverse**, directed to the polypeptide shown in Figure 8 and set forth in SEQ ID NO:15 and to the corresponding intron 8-encoded molecule set forth in SEQ ID NO:14.

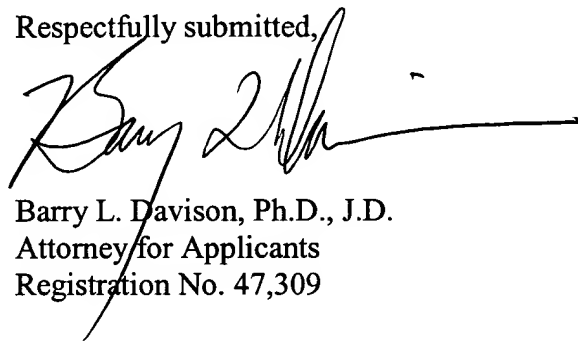
Applicants' traverse is based, as already shown in the record, on the fact that the presently claimed herstatin variants represent naturally polymorphic variants from otherwise normal individuals (for summary see applicants' amendment filed 18 January 2005 and particularly the affidavit of Dr. Gail Clinton attached thereto). Additionally, the original application has already been restricted (see Requirement of 02 October 2002), all of these variants **have already been searched** during the course of the present prosecution, and there is, therefore, no "serious search burden on the Office," as asserted by the Examiner. Moreover, the present restriction is being imposed in the context of a change in Examiners, because the prior Examiner left for maternity leave, with the effect that applicants are being subjected to inconsistent, piecemeal prosecution.

According to MPEP 704.01 (Search), "when an examiner is assigned to act on an application which has received one or more actions by some other examiner, full faith and credit should be given to the search and action of the previous examiner unless there is a clear error in the previous action or knowledge of other prior art." In the present case, the specification was read and searched by a prior examiner, and the prosecution has proceeded in the context of the presently claimed variants, including relating to written description and enablement issues relating to the recited variants.

According to MPEP 811 (Time for Making Requirement), a restriction should be made "in the first action if possible...." Additionally, "before making a restriction requirement after the

first action on the merits, the examiner will consider whether there will be a serious undue burden if restriction is not required. Applicants respectfully contend that (i) there can be no undue search burden where the Office has already performed the search and has examined the present claims reciting the variants, and (ii) the only undue burden will be that unreasonably placed on applicants in view of the presently proposed restriction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barry L. Davison', with a long horizontal flourish extending to the right.

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